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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate Future	)	RM-8117, RM-8030
Development of SMR Systems in the	)	RM-8029
800 MHz Frequency Band	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive	)	
Bidding	)	
800 MHz SMR	)	

To: The Commission

REPLY COMMENTS

Applied Technology Group, Inc. (Applied), by its counsel, hereby files Reply comments within the above captioned proceeding and requests that the Commission reject the proposals made within its notice as detrimental to independent, analog SMR operators, without concurrently providing a benefit to the public. In support, the following is stated.

The Basis For The Proposals Is Flawed

One of the primary bases for the Further Notice of Proposed Rule Making ("the Notice") is the misdirected notion that some method of bringing regulatory parity is required between ESMR systems and cellular (or PCS) providers. In its comments, Nextel Communications, Inc. (Nextel) even goes so far as to suggest that such parity is

statutorily mandated.<sup>1</sup> Nextel's suggestion is specious and insofar as its private agenda motivates the Commission, such motivation is without merit.

Nothing within the applicable statutes suggests that the Commission is obliged to create, out of whole cloth, a competitive position among otherwise differing providers so as to create a justification for regulatory parity. That this bootstrapping analysis is occurring within this proceeding is obvious.

Nextel nee Fleet Call, Inc. operates its ESMR systems in accord with the terms of a waiver of the Commission's Rules. An entity which exists by and through a waiver is hardly positioned to then state that this legal and operational aberration allowed by waiver has attained a status whereby it is now entitled to regulatory parity. This would be a bizarre application of the fundamental principles of spectrum regulation. It would mean that entities which can demonstrate the basis for a waiver, may then claim that by such waiver they have attained an exalted status, which provides them the standing, basis, and entitlement to claim even greater advantages than those entities which did not request an equal waiver.

One is compelled to ask, since when does the Commission provide greater regulatory advantages to waiver recipients, then those entities operating within the strict

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<sup>1</sup> Yet publicly Nextel Chairman Morgan O'Brien has denied aspiring to compete with cellular and PCS.

parameters of the Commission's Rules? Certainly Nextel is claiming this strange benefit. But Applied can find no time in the Commission's past when such status was ever afforded an entity which exists largely on the largesse of the Commission.

### The Historical Hubris Of Nextel

To recap the regulatory history of Nextel, one notes that it was first a large, traditional SMR provider. It acquired existing systems and built a large, competitive service providing analog dispatch service to thousands of end users. Nextel then attempted to sell the company to a Regional Bell Operating Company.<sup>2</sup> Unsuccessful in its efforts, Nextel launched its waiver request, stating that its new "ESMR" system would revolutionize the SMR industry by employing digital technology, frequency reuse, and other methods which were intended to mirror the next generation cellular systems. Most importantly, Nextel stated that its system might be brought to the market and fully implemented within the existing SMR environment. The waiver is granted, Nextel goes public, and Nextel claims that it will construct a seamless network throughout the United States by 1995 or 1996, depending on which source is accepted. Billions of dollars in stock is sold, its financial empire grows, its strategic partners begin to line up, and a giant of the industry is born.

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<sup>2</sup> A representative of Bell South confirmed that such negotiations were ongoing and later collapsed due, in some part, to the Commission's continued reluctance to allow wireline companies to compete in the SMR field.

This success story would be laudable, except there exist certain flaws and problems of which Nextel failed to inform the Commission when it started down its heady path. First, Nextel's ability to construct a seamless network within the time frame it claimed was, most charitably, ambitious. A review of its efforts thus far belie its earlier claims. Second, Nextel has not received a waiver of the Commission's Rules regarding alien ownership that would allow it to operate as a CMRS. Without a determination of its status, it is illogical for one to even consider its comments in this proceeding. Thus far, Nextel cannot demonstrate that it possesses the standing necessary to claim any right, entitlement or advantage arising out of its unsupported claim of CMRS status. Third, its touted system has been beset with software problems, technical problems and market acceptance problems. In sum, one must logically conclude that its efforts have been, in large part, a bust. Finally, its financial fortunes have plummeted. Its stock that once sold at over fifty, now hovers below fifteen. It appears that the financial community is looking elsewhere for its investments.

Nor may the Commission applaud Nextel's application/licensing methods. Nextel is presently the greatest warehouse of SMR spectrum in the United States. It is licensed to operate more channels in more markets than any other entity, despite the fact that fewer than fifty percent of those licensed channels are, in fact, constructed; and fewer more are employed to provide ESMR service to a uninterested public.

Despite its failure to actually construct or load channels providing ESMR service, Nextel continues unabated. It recently filed applications for a new ESMR service throughout the state of California, requesting up to 175 channels from San Francisco to Los Angeles. Nextel did not seem to be bothered by the fact that its applications requested spectrum that fully overlapped practically every independent operator in the region. Its answer in paraphrase, "we will later provide the engineering and the showings necessary, however, in the meantime, please accept our applications." This type of behavior is arrogant, unnecessary, and has a chilling effect on the marketplace that must not be rewarded with even greater advantages. Its applications, like so many previous applications, demonstrate Nextel's total disregard for local operators, the Commission's Rules, or the equity which those rules are intended to provide.

That the Commission would even consider providing additional advantages to this entity is quite unfortunate. Politics aside, Nextel has not demonstrated its ability or willingness to abide by the Commission's Rules, the Commission's processes, the mandate against warehousing of spectrum, or the fundamental fairness which is correctly imposed on all other licensees. One would have to search a long time to discover an entity which has acted with such consistent impunity. One might never find one which has been so consistently rewarded despite its disinterest for law and how such law might apply to it.

### Nextel's Justifications Are Handmade

Nextel's justification for forced frequency swapping, MTA licensing, and auctions are made by its own hands. That is, Nextel has created the problems, the congestion, the technological mishaps, and now seeks assistance from the Commission in cleaning up its own mess. For example:

- \* Nextel claims that the rule making is justified to relieve spectrum congestion. Nextel does not point to its creation of much of this congestion by its filing for scores of channels in areas which do not require such a high level of service due to limited population density.
- \* Nextel fails to note that its speculation in spectrum, albeit on a grander scale, was the primary fuel for further speculation by unscrupulous operators who prayed on the hopes of the American public. Nextel is to be congratulated for not engaging in "infomercials", yet, according to its Chairman, Nextel did manipulate members of the press to gain its reputation. One would be hard pressed to determine the moral differences between the use of infomercials and the use of a pliant press, to achieve a similar goal -- investment by a uninformed public. Indeed, a well-funded speculator is still, nonetheless a speculator.

- \* Nextel's request for contiguous spectrum arises out of its failure to account for the hostility which existed in the spectrum environment within many urban areas. By the language of its original waiver request, such contiguous spectrum was unnecessary. Now, it claims the contrary. Its change of heart comes too late and at too high a price.

In the language of recent times, Nextel is attempting to characterize itself as a victim and requests that the Commission be both its support group and its savior. This popular approach for excusing a panoply of past misdeeds should be fully rejected by the Commission, which demands greater responsibility and accountability from its regulatees. Nextel is no victim. It is the creator of its own destiny. It has made the errors, misstatements, and miscalculations which had led it to this place. It cannot logically blame any other source for its woes, nor should it be allowed to make victims out of local, analog operators to solve its problems. And, if the Commission adopts the proposals, it will surely do so by victimizing local operators for the singular benefit of Nextel.

#### An Opportunity To Succeed

A few years ago, the Commission gave Nextel a waiver of its rules, providing Nextel with an opportunity to succeed far beyond that which had been afforded any other SMR operator. That authority is probably best characterized as the Commission's offer of a few benefits in exchange for Nextel's promise to bring forth a new service. Not

only has the Commission delivered on its stated promises within that waiver, a close review of the Commission's records will show that the Commission has gone well beyond the strict language of the grant of the waiver and has provided additional benefits to Nextel which were not contemplated in the waiver grant. It would appear, therefore, that the Commission has fully met its end of the bargain.

Unfortunately, the Commission has little to show for its kind efforts. Nextel's service is anemic. Nextel has spent more energy delivering stock than it has delivering ESMR service to the public. Now it comes before the Commission requesting more and more.

Applied suggests that it is time for the Commission to provide the same opportunity to the hundreds of local, analog operators that it provided to Nextel. Those operators want and demand an opportunity to succeed. The Commission's proposals, if adopted, would remove that potential. Wide-area licensing would concentrate the spectrum in the hands of the few, largest entities, whose ranks shrink each time Nextel announces another merger. Local SMR operators would be precluded from obtaining additional spectrum for providing service to a demanding public. In sum, such licensing would create an untenable chill upon the market that cannot be justified.

Nothing contained within Nextel's comments suggests any justification for curtailing local operators' opportunity to succeed. Nextel's entrance into the market has



actually reduced competition for SMR services by reducing the number of competitive providers. Accordingly, there can be no basis for action arising out of a need to increase competition. Nextel's technology has not been shown to be appropriate for providing services, therefore, its technical justifications cannot be supported.

Nextel's greatest basis for its request is that present regulation has created a chaotic or inefficient licensing method. Applied strongly disagrees. The present rules, without waiver, are one of the great successes in regulation ever created by the Commission. The rules demand fidelity to the provision of service. The present rules require prompt construction and actual operation. The rules protect uses by public safety, while providing equitable opportunity for ambitious and successful operators, rewarding the increased provision of service to the public. Rarely in the history of the Commission has one set of rules ever produced such a vital industry, fueled by the unceasing efforts of telecommunications entrepreneurs.

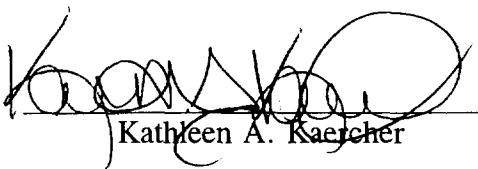
The SMR market did not, in fact, begin exhibiting signs of chaos and crisis until Nextel's entrance. The Commission's grant of the Nextel waiver created a new, voracious entity which gobbled up channels and investments and the Commission's scarce resources, then returned extremely little to the marketplace in the way of new services. Now, the SMR industry is bloated with speculators, brokers, agents, financial wizards, and hangers-on. Yet, among all of this dead weight still exists the independent operator, whose primary goal is still the provision of service to the public. Nextel seeks to remove

its self inflicted chaos by removing the last elements of proper activity in the market, the independent operator. After which, it will be able to stand atop its pile of unused spectrum, overreaching claims, financial machinations, and corporate manipulations to declare itself "King of the Hill". Such a success story has not been witnessed since "Yertle The Turtle" first landed on the shelves.

### Conclusion

For the reasons stated above, Applied strongly urges the Commission not to adopt those proposals contained in the Notice. The public interest does not require it. The industry would not benefit from adoption. And the independent operator would be so disadvantaged that the Commission would do just as well to state, "we have decided that only Nextel may operate on SMR spectrum." At least such a statement would have the advantage of candor.

Respectfully submitted,  
APPLIED TECHNOLOGY GROUP, INC.

By   
Kathleen A. Kaercher

Brown and Schwaninger  
Suite 650  
1835 K Street, N.W.  
Washington, D.C. 20006  
202/223-8837

Dated: March 1, 1995

## CERTIFICATE OF SERVICE

I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

Young & Jatlow  
2300 N Street, N.W.  
Suite 600  
Washington, D.C. 20037

Kelly & Povich, P.C.  
1101 30th St., N.W.  
Suite 300  
Washington, D.C. 20007

Counsel for:  
Pittencrief Communications, Inc.  
E.F. Johnson Company  
Gulf Coast Radio Fone  
Deck Communications, Inc.  
Nodak Communications  
Wiztronics, Inc.  
Raserco, Inc.  
Vantek Communication, Inc.  
Southern Minnesota Communications  
Brandon Communications, Inc.  
Dakota Electronics  
Bis-Man Mobile Phone, Inc.  
Rayfield Communications  
B & C Communications  
Radio Communications Center  
Keller Communication, Inc.  
Don Clark Radio Communications  
Pro-Tec Mobile Communications  
Automated Business Communication  
Morris Communications  
Nielson Communications  
E.T. Communications Company  
Bolin Communications System  
Diamond "L" Industries, Inc.

Counsel for:  
Ericsson Corporation

Lukas, McGowan, Nace & Gutierrez  
1111 19th Street, N.W.  
Washington, D.C. 20036

Counsel for:  
Fisher Communications, Inc.  
American Mobile Telecommunications Assoc.

Motorola, Inc.  
1350 Eye Street, N.W.  
Suite 400  
Washington, D.C. 20005

Counsel for:  
Advanced Mobilecomm, Inc.

Mintz, Levin, Cohn, Ferris, Glovsky, &  
Popeo, P.C.  
701 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Counsel for:  
McCaw Cellular Communications, Inc.

Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW  
Suite 300  
Washington, DC 20554

Counsel for:  
The SMR Small Business Coalition

Mark J. Golden  
Meyer, Faller, Weisman & Rosenberg, P.C.  
4400 Jennifer Street, NW  
Suite 300  
Washington, DC 20015

Wiley Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

William R. Miller  
Russ Miller Rental  
3620 Byers Avenue  
Fortworth, Texas 76107

Counsel for:  
Personal Communications I

Counsel for:  
Robert J. Butler

Joel Freedman  
Vice President, General Counsel  
Dial Call Communications  
1355 Peachtree Street, Suite 755  
Atlanta, GA 30309

Mark Lindquist  
Communications Center, Inc.  
Box 1034  
Pierre, SD 57501

John D. Pellegrin  
1140 Connecticut Avenue, N.W.  
Suite 606  
Washington, DC 20036

Counsel for:  
American SMR Company

Duncan C. Kennedy  
Genesee Business Radio  
992 Cater Street  
Rochester, NY 14621-1910

Meyer, Faller, Weisman  
& Rosenberg, P.C.  
Allan S. Tilles  
4400 Jenifer Street, NW  
Suite 380  
Washington, DC 20015

Counsel for:  
Parkinson Electronics

Ross & Hardies  
888 16th Street, NW  
Suite 400  
Washington, DC 20006

Counsel for:  
SMR Won

Fisher, Wayland, Cooper,  
Leader & Zargoza, L.L.P.  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, DC 20006

Keller & Heckman  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001

Counsel for:  
The Southern Company  
DCL Associates  
American Petroleum Institute  
US Sugar Corporation

Lewis H. Goldman  
1850 M Street  
Suite 1080  
Washington, DC 20036

Counsel for:  
Douglas L. Bradley

McCaw Cellular Communications, Inc.  
1150 Connecticut Avenue, NW  
Washington, DC 20036

Bryan Cave  
700 Thirteenth Street, NW  
Suite 700  
Washington, DC 20005-3960

Counsel for:  
CenCall, Inc.

Timothy P. Haley  
Centennial Telecommunication  
130 N. Bond Street  
Suite 201  
Bel Air, MD 21014

Latham & Watkins  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Counsel for:  
Vanguard Cellular Systems  
Raymond B. Grochowski

Charles C. Townsend  
Atlantic Cellular Company  
15 Westminster St., Suite 830  
Providence, RI 02903

Raymond J. Stone  
American Industrial & Marine Electronics, Inc.  
P.O. Box 715  
Dover, Delaware 19901

John E. Sonneland  
Courtesy Communications  
W. 801 Fifth Ave.  
Suite 410  
Spokane, WA 99204

Michael R. Carper  
4643 South Ulster Street  
Suite 500  
Denver, CO 80237

Morrison & Foerster  
2000 Pennsylvania Ave., N.W.  
Suite 5500  
Washington, DC 20006

Industrial Telecommunications Association, Inc.  
Alliance of Private 800/900 MHZ Licenses  
Frederick J. Day, Esq.  
1110 North Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Cellular Telecommunications  
Industry Association  
Michael F. Altschul  
Vice President, General Counsel  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, DC 20036

Association of Public-Safety  
Communications Officials International, Inc.  
Wilkes, Artis, Hedrick & Lawe, Chartered  
1666 K Street, N.W.  
Suite 1100  
Washington, DC 20006

Council of Independent Communication Suppliers  
Frederick J. Day  
Mark E. Crosby  
1110 N. Glebe Road  
Suite 500  
Arlington, VA 22201-5720

Organization for the Protection and  
Advancement of Small Telephone Companies  
Lisa M. Zgina, General Counsel  
21 Dupont Circle, N.W.  
Suite 700  
Washington, DC 20036

Dru Jenkinson, Inc.  
Bessozzi, Gavin & Cravn  
1901 L Street, N.W.  
Suite 200  
Washington, DC 20036

National Telephone Cooperative Assoc.  
David Cosson  
2626 Pennsylvania Ave., N.W.  
Washington, DC 20037

Spectrum Resources, Inc.  
A.C. Miller  
307 Annandale Road  
Suite 101  
Falls Church, VA 22042

Chadmoore Communications  
Keck, Mahin & Cate  
1201 New York Avenue, N.W.  
Washington, DC 20005-3919

Palmer Communications, Inc.  
Marianne H. Lepara  
12800 University Drive  
Suite 500  
Ft. Meyers, FL 33907-5333

Total Comm, Inc.  
William C. Wyatt, President  
2701 N. Van Buren  
Enid, OK 73703

Utilities Telecommunications Council  
Jefrey L. Sheldon, General Counsel  
1140 Connecticut Ave., N.W.  
Suite 1140  
Washington, DC 20036

U.S. Small Business Administration  
Jere W. Glover, Esq.  
409 3rd Street, S.W.  
Washington, DC 20416

Communications Unlimited, Inc.  
Lewis H. Goldman  
1850 M. Street, N.W.  
Suite 1080  
Washington, DC 20036

Nextel Communications, Inc.  
Robert S. Foosner  
800 Connecticut Avenue, N.W.  
Suite 1001  
Washington, DC 20006

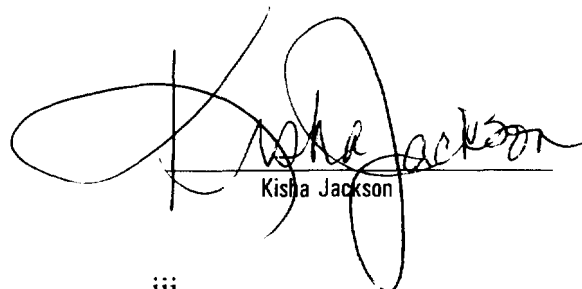
Telcelular de Puerto Rico, Inc.  
Law Offices of Richard S. Myers  
1030 15th Street, N.W.  
Suite 906  
Washington, DC 20006

Freedom Mobile Communication, Inc.  
Jerome M. Freund, President  
14 Ray Street  
Beaver Falls, PA 15010

Delta Communications, Inc.  
Kimo C. Chun, Director  
2646 Kili Hau Street  
Honolulu, HI 96819

Southwestern Bell  
Linda M. Hood  
173330 Preston Road  
Suite 100A  
Dallas, TX 75252

Associated Public Safety Communications Officer, Inc.  
Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, N.W.  
Washington, DC 20006



Kisha Jackson